

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	
The Peoples Gas Light and Coke Company	:	10-0716
	:	
Citation for alleged violations of federal	:	
rules incorporated by the	:	
Illinois Commerce Commission regarding	:	
testing.	:	

ADMINISTRATIVE LAW JUDGE’S RULING

Respondent, The Peoples Gas Light and Coke Company (“PG”), has filed a Motion for Partial Summary Judgment. Commission Staff filed a Response to the motion and PG filed a Reply to Staff’s Response.

This citation proceeding was initiated to determine whether PG has contravened certain provisions of Title 49 of the Code of Federal Regulations (adopted by the Commission in accordance with Illinois law) – specifically, 49 CFR 192.13(c) and 49 CFR 192.515(a). PG’s motion concerns only the latter provision.

The Commission recognizes summary judgment as an efficient dispute resolution mechanism when meaningful fact-finding is unnecessary. Section 2-1005 of the Illinois Code of Civil Procedure¹ governs summary judgment in Illinois courts. While not binding in Commission matters, Section 2-1005 offers a time-tested framework for summary decision-making, awarding summary judgment “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”

According to the pleadings and associated filings in this docket, on March 3, 2010, PG employees were pressure testing a segment of gas main distribution pipe, in order to “uprate” (*i.e.*, increase the pressure within) the distribution system that included that segment. During that procedure, one PG employee was killed and another injured.

PG’s core argument is that subsection 192.515(a) is inapplicable to the foregoing incident. In relevant part, subsection 192.515(a) states: “In conducting tests under this subpart, each operator shall insure that every reasonable precaution is taken to protect its employees and the general public during the testing.” PG emphasizes that 515(a) is

¹ 735 ILCS 5/2-1005.

part of and (in PGL's view) expressly limited to, Subpart J ("Test Requirements") of Part 192 of the relevant federal regulations². PG maintains that, because the subject accident occurred in the course of uprating, Subpart K of Part 192 ("Uprating") "governs the work at issue in this proceeding."³ In other words, PG asserts that its compliance duties were limited to the provisions of Subpart K, but not the provisions of Subpart J.

Staff opposes PG's argument, contending that PG treats uprating as "a discrete activity to which no federal pipeline safety regulations other than those applicable to 'uprating' apply."⁴ It is not clear that PG's argument is as broad as Staff suggests. If it is, however, it is patently incorrect. Like any multi-sectional body of law, Part 192 (and, for that matter, the subchapter, chapter, subtitle and title of which it is a component) must be construed and applied as a whole, with the intention of achieving the law's purposes. To achieve the over-arching purpose of Subchapter D ("Pipeline Safety"), every provision of Part 192 that addresses a given activity, policy, procedure, person or infrastructure must be satisfactorily implemented, both individually and in conjunction with each other. For example, whether PG is performing a test during uprating or for some other purpose, it must ensure, among other things, that its personnel meet the requirements of Subpart N ("Qualification of Pipeline Personnel"), while observing the minimum operating requirements of Subpart L ("Operations"), and utilizing pipe and other components that satisfy Subparts C ("Pipe Design") and D ("Design of Pipeline Components").

Part 192 is thus not implemented by applying what might appear to be the most immediately pertinent subheading and ignoring all others. Rather, it is implemented by applying all provisions, from whatever subpart, that reasonably apply to the relevant circumstances. Nothing in Part 192 (or the broader regulatory framework of which it is a part), states or implies that its subparts are, in general, mutually exclusive.

The narrower question is whether there are particular provisions in Subparts J and K that make those specific subparts, or specific elements within them (including subsection 192.212(a), mutually exclusive. Expressing that question operationally, are pressure testing and uprating distinct procedures? Or are they entwined, so that the minimum testing requirements of Subpart J and the operating pressure requirements in Subpart K are implemented coterminously?

PG puts considerable weight on the fact that subsection 192.503(a) of Subpart J states that "[n]o person may operate a *new segment* of pipeline, or return to service a segment of pipeline *that has been relocated or replaced*, until [certain requirements have been fulfilled]." (Emphasis added.) Since the pipe segment involved here was not new, replaced or relocated, PG reasons that the foregoing quoted provision renders Subpart J inapplicable to the pipe involved in this proceeding. However, the language

² Part 192 appears in Subchapter D ("Pipeline Safety"), of Chapter I ("Pipeline and Hazardous Materials Safety Administration, Department of Transportation") of Subtitle B ("Other Regulations Relating to Transportation") of Title 49 ("Transportation") of the CFR.

³ PG Motion at 5.

⁴ Staff Response at 3.

PG relies upon does not delineate the scope of Subpart J. The scope is described in Section 192.501 (“Scope”) as follows: “This subpart describes minimum leak-test and strength-test requirements *for pipelines*.” (Emphasis added.) There is no exception for pipelines being uprated. Subpart J establishes testing requirements for *all* pipelines.

Subsection 192.503(a) does not, as PGL might prefer, reduce the scope of Subpart J. It merely sets forth operational prerequisites for specified subsets of pipeline (new, relocated and replaced). Thus, the applicability of subsection 192.503(a) to its particular pipeline subset does not affect the applicability of the other sections of Subpart J to testing performed during uprating. It follows that subsection 192.515(a) would also apply to testing connected with uprating.

PG stresses, however, that subsection 192.515(a) is expressly limited to “this subpart” (Subpart J). While that is correct, it does not mean that “this subpart” is inapplicable in the uprating context. When strength tests and leak tests are conducted, during uprating or otherwise, Subpart J applies, and the safety precautions mandated by subsection 192.515(a) must be taken. Putting that another way, “testing under this subpart” means strength testing and leak testing conducted for any purpose authorized by Subchapter D of Title 49. Moreover, given that 192.515(a) simply mandates a general regard for worker and public safety, there is no reason to assume it would not apply to tests performed in the specific context of uprating (or any other context).

Moreover, there are several provisions in Subparts J and K that indicate, either explicitly or impliedly, that those subparts are implemented in conjunction with each other (and with the other subparts of Part 192), as warranted by extant circumstances. First⁵, under specified conditions, subsection 192.555(d)(1) of Subpart K contemplates that a pipeline segment will be “successfully tested in accordance with the requirements of *this part* for a *new line* of the same material in the same location.” (Emphasis added.) By referencing this “part” (rather than “subpart”) and “new line,” subsection 192.555(d)(1) functionally and intrinsically incorporates Subpart J⁶.

Second, subsection 192.553(b) of Subpart K mandates retention of records concerning “each pressure test conducted, in connection with the uprating.” Subpart K does not specify its own pressure test procedures, and it does not detail what an operator’s records must include. Subpart J supplies those specifications.

Third, subsection 192.553(d) of Subpart K limits maximum operating pressure (unless subsection 192.555(c) applies) to a maximum calculated by reference to Section 192.619 of Subpart L. Subsection 192.619(d), when elected, subjects a

⁵ This is not intended to be an exhaustive list. Sections of Subparts J and K expressly or impliedly interrelate with each other, and with sections in many other Subparts of Part 192, to a greater extent than need be catalogued here.

⁶ Subsection 192.555(d)(1) applies only when uprating a pipeline to a pressure that will produce a hoop stress of 30% or more of specified maximum yield strength. Staff presumes that PG’s planned uprating would not have reached that threshold. Staff Response at 6, fn. 2. However, that is not definitively established by any filed document, necessitating further fact-finding. In any event, the conclusion reached in this Ruling – that Subparts J and K are applied concomitantly – would not be affected.

pipeline to Section 192.620 of Subpart L, which, in turn (in subsection 192.620(c)(4)), expressly requires compliance with subsection 192.505 of Subpart J.

The point is not that any of the foregoing necessarily applies to the instant case. (Indeed, without additional fact-finding, the ALJ cannot even determine which subsections of Subpart K - on which PG relies - are applicable in this case; the applicable subsections of other interrelated subparts, including Subpart J (except subsection 192.515(a), the subject of the instant Motion), are similarly indiscernible without more facts.) Rather, the point is that the subparts of Part 192 are expressly, impliedly and functionally implemented *together*, as warranted by the circumstances a pipeline operator's activities present. In this case, PG intended to uprate a pipeline by employing pressure testing, which made both Subpart J and Subpart K (and other subparts) applicable to its activities.

Furthermore, PG understands that pressure testing is inextricably part of uprating. In its response to the Commission's Notice of Possible Violation concerning the subject incident, PG stated that "it is necessary to read the uprating and pressure testing procedures together."⁷ It makes no difference that PG was referring to its internally codified procedures, rather than Part 192, since the former are premised upon the latter – and since the point here is that PG does not operate on the assumption that the subparts of Part 192, including Subparts J and K, are implemented discretely. Indeed, all of the pertinent PG documents filed in this proceeding treat pressure testing as an inherent element of uprating⁸.

Accordingly, PG's Motion for Partial Summary Judgment is denied. To be clear, this Ruling does not, in any way, conclude that any particular subsection of Part 192, other than subsection 192.515(a), is applicable to the specific circumstances associated with the incident that led to this proceeding. Nor does this Ruling, in any way, suggest - much less conclude - that any provision of Part 192, including subsection 192.515(a), has been contravened by PG.

End of Ruling.

⁷ Staff Report, Nov. 10, 2010, Att. A, p. 2.

⁸ *E.g.*, "[O]n March 3, 2010, a Peoples Gas crew arrived...to *pressure test* a segment of 20-inch steel main that had been taken out of service *for uprating* from low pressure to medium pressure." PG Motion at 2 (emphasis added).